

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1114 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No

PANKAJKUMAR RAMSING SISODIYA

Versus

SHILABEN D/O.SHANTILAL CHAUHAN

Appearance:

MR MB GANDHI for Petitioners

MR DR BHATT for Respondent No. 1

MR.S.A.PANDYA, ADDL.PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 14/10/96

ORAL JUDGEMENT

The present petition under Article 227 of the Constitution of India has been filed by the petitioner-husband challenging the order of maintenance passed by the learned Metropolitan Magistrate, Ahmedabad in Miscellaneous Criminal Application No. 186 of 1986 whereby the respondent No.1-wife and her child were granted maintenance at the rate of Rs.250/- and Rs.150/per month , in all Rs.400/- per month from the date of the application. The said judgment and order was

challenged by way of revision by the petitioner before the City Sessions Court, Ahmedabad and the learned Additional City Sessions Judge by his impugned judgment and order dated 6-1-89 , while rejecting the said revision, confirmed the judgment and order passed by the learned Metropolitan Magistrate.

Mr.M.B.Gandhi, learned Advocate, appearing for the petitioner, has placed reliance on the document of divorce dated 19-5-86, Annexure "C" to the petition. In the submission of Mr. Gandhi, in view of the divorce which took place between the parties, the respondent-wife is not entitled to claim any maintenance and, therefore, the Courts below ought not to have awarded any amount by way of maintenance. It is not possible for this Court to accept this submission of Mr. Gandhi for the simple reason that the courts below have recorded a finding which is essentially a finding of fact viz that there was no divorce entered into between the petitioner and the respondent-wife. The view for not accepting the deed of divorce cannot be said to be perverse or unreasonable. In any case, in view of the concurrent finding of fact recorded by the Courts below to the effect that there was no valid divorce between the parties, it is not possible for this Court to take an exception to it and record a different finding. In view of this, I see no merit in the petition and hence it is rejected. Rule is discharged with no order as to costs. Ad-interim relief stands vacated.

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